HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1386 of 2005 (SS)

Smt. Prakashi Petwal ..... Petitioner

Versus

1. State of Uttaranchal
2. District Education Officer, Dehradun
3. Additional District Education Officer (Basic) Dehradun. ..... Respondents

Writ Petition No. 1409 of 2005 (SS)

Smt. Chandra Kanta ..... Petitioner

Versus

1. State of Uttaranchal
2. District Education Officer, Dehradun
3. Additional District Education Officer (Basic) Dehradun. ..... Respondents

Writ Petition No. 1410 of 2005 (SS)

Smt. Shushila Devi ..... Petitioner

Versus

1. State of Uttaranchal
2. District Education Officer, Dehradun
3. Additional District Education Officer (Basic) Dehradun. ..... Respondents

Writ Petition No. 1411 of 2005 (SS)

Smt. Sumitra Devi ..... Petitioner

Versus

1. State of Uttaranchal
2. District Education Officer, Dehradun
3. Additional District Education Officer (Basic) Dehradun. ..... Respondents

Sri H.M. Raturi, Advocate for the petitioners
Sri Harendra Belwal, Brief Holder for the respondents.

Dated: 27.9.2005

Hon'ble Rajesh Tandon J.

Heard Sri H.M. Raturi, counsel for the petitioner and Sri Harendra Belwal for the respondents. Both the counsel have submitted that the writ petitions be finally decided at this stage.

By the present writ petitions the petitioners have prayed for a writ of certiorari quashing their transfer orders dated 3.8.2005 and 30.6.2005 passed by the respondent no. 2, so far as it relatea to the petitioners.

Briefly stated the petitioner Smt. Prakashi Petwal is presently posted as Assistant Teacher in Primary School, Nehru Gram, Dehradun who has been transferred to Primary School Dhorekidandi, Block Vikas Nagar vide order dated 3.8.2005. Petitioner Smt. Chandra Kanta is working at Primary School, Balawala who has been transferred to Primary School Matheu, Kalsi vide order dated 30.6.2005.

Petitioner Smt. Shushila Devi is presently posted as Assistant Teacher in the Primary School Nagal Hatnala who has

been transferred from there to Primary School, Bareth, Block Kalsi vide order dated 30.6.2005.

Smt. Sumitra Devi is presently posted as Assistant teacher in Primary School, Shashradhara, Block Raipur who has been transferred to Primary School Bagi, Block Kalsi vide order dated 30.6.2005.

The main grievance of the petitioners is that their transfer place is situated in the remote place of Kalsi Block and also far from the motor road. They have their families and school going children and from the transfer place they cannot visit their home frequently to look after their children and family affairs. In writ petition no. 1386 of 2005 (SS), the petitioner has submitted that although the transfer order has been passed due to surplus staff but at the same time another candidate has been accommodated in the same school.

So far as the transfer order is concerned no interference can be made under Article 226 of the Constitution of India. An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered if the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order.

It has been held by the Apex Court in the case Shilpi Bose and others vs. State of Bihar and others AIR 1991 SC 532 as under:

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post

has no vested right to remain posted at one place or the other, he is liable to be transferred from the one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration, which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

Further the apex Court in State of U.P. v. Goberdhan Lal (2004) 11 SCC 402 has observed as under:

"A challenge to an order of transfer should normally be eschewed and should not countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

It is well settled that the transfer is an exigency of service. However option for the petitioners to approach the higher authorities is available and the petitioners are at liberty to approach the higher authority.

Liberty is, therefore, given to the petitioners to make representation to the appropriate higher authority within 15 days after receipt of the certified copy of this order, who shall decide the same within two months thereafter. The order of transfer shall remain in abeyance, so far as it relates to the petitioners only, for a period of three months.

With the aforesaid observations, the writ petitions are disposed of. No order as to costs.

27.9.2005

Dhyani **Rajesh Tandon J.**